

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

PATRICIA DAVIS DANEMAN
AMSTER,

Plaintiff and Respondent,

v.

FRANK I. MULBERG, as Trustee, etc.,
Defendant and Appellant.

A146374

(Marin County
Super. Ct. No. PRO-1400334)

Frank I. Mulberg served as trustee for a trust with a single beneficiary, Patricia Davis Daneman Amster. Mulberg and Amster's relationship was positive at first, but later soured. Amster and Mulberg filed competing petitions with the probate court concerning Mulberg's compensation. Following a trial, the probate court issued a statement of decision approving a trustee's fee of \$227,897.59, and surcharging Mulberg for excess fees totaling \$267,222.16. Mulberg now appeals, arguing the probate court (1) miscalculated the fees Mulberg actually received from the trust, (2) erred in determining the fees authorized by the trust instrument, and (3) erroneously found Mulberg breached his fiduciary duties.¹ We affirm.

¹ At oral argument, Mulberg's counsel asserted the trial court erred by improperly overruling his objections to the proposed statement of decision as untimely. Counsel argued Mulberg's objections were in fact timely. This is a new argument, and we therefore need not address it. While Mulberg briefly mentions his objections to the proposed statement of decision in the background section of his opening brief, his 40-page argument section is devoid of any mention of them. Nor do Mulberg's briefs

I. BACKGROUND

In November 2009, Arlene T. Davis executed the Patricia Davis Daneman Amster 2009 Irrevocable Trust (the Trust). Amster, Davis's daughter, was named as the sole beneficiary of the Trust.

As to the trustee's fees, section 5.5.15 of the Trust provides: "Any Trustee serving hereunder shall be entitled to be paid reasonable fees for services rendered in such capacity . . . and to charge such fees to income and principal of any trust created hereunder in such proportions, or entirely to income or principal If any Trustee is an attorney or an accountant who regularly charges clients based upon customary hourly rate, he or she may charge such rate as his or her Trustee's fee provided that the total fees paid for an annual period do not exceed that a Qualified Corporate Trustee would charge for the same services."

After Davis passed away in September 2011, Amster removed the appointed trustee, Mechanics Bank, and appointed Mulberg.² Before he was appointed trustee, Mulberg had acted as Amster's personal counsel. The court later found Amster was a difficult and demanding beneficiary. "She was often unreasonable and even volatile, sending [Mulberg] between 8,000 [and] 10,000 emails during the period he served the Trust as trustee. Ms. Amster expected him to return telephone calls on weekends and after regular business hours."

In January 2014, Amster filed a petition for "accountings, suspension of powers and removal of trustee; for appointment of successor trustee, and for sanctions or

otherwise discuss the contents of Mulberg's objections or why the trial court's purported error merits reversal. The California Rules of Court require briefs to "[s]tate each point under a separate heading or subheading summarizing the point, and support each point by argument, and if possible, by citation or authority." (Cal. Rules of Court, rule 8.204(a)(1)(B).) Mulberg fails to meet any of these requirements as to his claim regarding the trial court's purported failure to address his objections to the statement of decision. Accordingly, we need not and do not address this claim.

² It is unclear from the record or the briefing exactly when Mulberg was appointed trustee. Mulberg's appellate briefing asserts, without citation to the record, that he was appointed sometime in September 2011.

surcharge, punitive damages and attorney's fees." Amster asserted Mulberg had refused to make requested accountings or to otherwise respond to her requests for information, and had also refused to resign as trustee. Around the same time, Mulberg filed a cross-petition for approval of the trust accounting, requesting approval of the settlement of the trust accounts and instructions to issues raised by Amster. Marlene Getchell was appointed as the successor trustee for the Trust in March 2014.

A trial was held on the matters in June 2015. Getchell testified as a nonretained expert witness for Amster and Peter Myers testified as a retained expert for Mulberg. The court also heard testimony from James Mitchell, who drafted the Trust for Davis, among others.

A statement of decision was issued on September 10, 2015. The probate court held Mulberg's compensation was limited by the Marin County Superior Court Local Rules. The court also held Mulberg breached his fiduciary duty by charging for his services as both a trustee and as an attorney, billing for attorney work performed by his son, and failing to provide an annual accounting of the Trust assets. The court found a qualified corporate trustee would have charged the Trust 1 percent of the Trust corpus per annum for the same services. However, the court also found Amster should not benefit from her conduct as a demanding and often unreasonable beneficiary, and therefore exercised its equitable discretion to award Mulberg a 1.75 multiplier of the fee. The court surcharged Mulberg \$267,222.16, the difference between the \$495,119.75 the Trust paid him for his services and the \$227,897.59 in approved fees. With the exception of the approval of Mulberg's requested fees, the court granted Mulberg's petition for settlement of accounts.

II. DISCUSSION

A. Standard of Review

The matter of a trustee's compensation is within the discretion of the probate court. (*Estate of Gump* (1991) 1 Cal.App.4th 582, 597.) Accordingly, most of the issues raised on appeal are reviewed for abuse of discretion. However, to the extent Mulberg's contentions raise purely legal questions concerning the interpretation of the Trust, which

do not require the consideration of extrinsic evidence, we review de novo. (*Golden West Baseball Co. v. City of Anaheim* (1994) 25 Cal.App.4th 11, 21–22.) To the extent parol evidence is necessary to interpret the Trust and that evidence is in conflict, we review under the substantial evidence test. (*Appleton v. Waessil* (1994) 27 Cal.App.4th 551, 556.)

B. Calculation of Trustee Compensation Received

The \$267,222.16 surcharge assessed against Mulberg represented the difference between \$495,119.75, the amount Mulberg received from the Trust, and \$227,897.59, the amount of fees the probate court found a qualified corporate trustee would have charged. Mulberg argues the surcharge should be reduced because he was paid only \$432,299.75 in trustee's fees. Mulberg does not dispute he received a total of \$495,119.75 from the Trust. However, he asserts \$62,820 of that sum was for previously owed attorney fees earned prior to his trusteeship. We presume the probate court's factual findings on this issue are correct and must affirm unless they are not supported by substantial evidence. (See *Estate of Moore* (2015) 240 Cal.App.4th 1101, 1106.) We conclude there was sufficient evidence to support the probate court's findings.

First, Mulberg takes issue with the probate court's finding that a \$35,000 payment made to him on October 19, 2011, counted toward the trustee's fees he actually received. The probate court's finding was based on a \$35,000 check Mulberg wrote to himself from the Trust on October 19, 2011, sometime after he was appointed trustee. Despite the fact this payment was made by the Trust, Mulberg asserts it was for legal services rendered to Amster prior to his trusteeship, and thus should not have been included in the surcharge calculation. Mulberg does not point to any billing records for his services. Instead, he relies on his own self-serving testimony at trial. Mulberg also relies on several e-mails he exchanged with Amster in October 2011 and April 2012. While these e-mails indicate the \$35,000 was for an "outstanding legal bill," and that Amster did not object to payment, the e-mails do not specify what legal services were rendered, to whom they were rendered, or when they were rendered. In light of the absence of billing

records and the fact Mulberg was paying himself using the Trust's money, we cannot conclude the probate court erred in including the \$35,000 in its surcharge calculation.

Next, Mulberg takes issue with the probate court's treatment of an \$80,968.25 check he made out to himself on January 30, 2012, using the Trust's funds. The entire payment was included in the court's surcharge calculation. Mulberg argues this was a "divided payment"—\$27,820 was for "unpaid prior attorney's fees for Amster individually," and the remaining \$53,148.50 was for trustee compensation. In support, Mulberg cites to a summary of account for the Trust he submitted to the probate court in January 2014. The summary indicates the Trust made a \$53,148.50 payment to Mulberg on January 30, 2012, and \$27,820 disbursement to Amster on that same date. The implication appears to be that \$27,820 of the \$80,968.25 was disbursed to Amster so she could pay outstanding legal fees Mulberg incurred before becoming trustee. Mulberg also points us to an April 2012 e-mail from Amster to Mulberg and his son, asking: "[W]hat do i owe you 2 for your well earned services now, after my 2 payments?" Mulberg responded that a bill would be "work[ed] up." To the extent such a bill was created, Mulberg has not provided a record citation for it. Many inferences could be drawn from this circumstantial evidence. But considering the dearth of documentation and billing statements explaining what these payments were for, we cannot find the probate court erred in inferring the entire \$80,968.25 was paid to Mulberg in connection with his services as trustee.

C. Calculation of Compensation Authorized by Trust

The Trust provides a trustee is entitled to "reasonable fees," and an attorney or certified public accountant (CPA) serving as CPA may charge their customary hourly rate so long as it does not exceed that which a qualified corporate trustee would charge for the same services. Based on the evidence adduced at trial, the probate court found a qualified corporate trustee would have charged 1 percent of the total trust corpus per annum, but awarded Mulberg a 1.75 multiplier of that fee in consideration of the fact Amster was a demanding beneficiary. The court's award is consistent with the Marin County Superior Court Local Rules, which provide: "Where a corporate trustee is

actively managing an income producing trust, a reasonable fee should usually not exceed 8/10ths of 1% of the principal of the trust per annum at the carry value at the close of the accounting period.” (Super. Ct. Marin County, Local Rules, rule 5.83(B)(1).) Mulberg asserts the probate court erred because (1) the court misapplied the Trust’s compensation provisions; (2) trustee compensation should have been calculated based on the market value of the trust assets rather than their carry value; and (3) a qualified corporate trustee would have charged more than 1 percent for the same services. We find no error.

1. The Trust’s Compensation Provisions

As discussed, the Trust provides the trustee is entitled to recover reasonable fees. Mulberg argues that, because the Trust does not define the term “reasonable fees,” the probate court should have considered the guidelines set forth in California Rules of Court, rule 7.776, and erred by failing to do so. We are not convinced. Rule 7.776 is not compulsory. It merely provides a list of factors that a court *may* consider in setting the compensation of a trustee. Moreover, the probate court did consider many (if not all) of the factors set forth in rule 7.776, including the skill of the trustee, the fidelity or disloyalty shown by the trustee, the time spent in performance of the trustee’s duties, and the custom in the community. (Cal. Rules of Court, rule 7.776(3), (4), (6), (7).) For example, the probate court’s statement of decision discussed Mulberg’s inexperience in managing multi-million-dollar trusts, Mulberg’s breaches of fiduciary duty, Amster’s unreasonable demands on Mulberg’s time, the extent to which Mulberg was involved in overseeing the Trust’s real estate purchases and investments, the Marin County Superior Court Local Rules, and the rates charged by others in the community.

Next, Mulberg argues the probate court erred in relying on the testimony of Mitchell, the settlor’s attorney, to interpret the term “reasonable fees.” Specifically, Mulberg takes issue with the following excerpt from the statement of decision: “[Mitchell] testified that the term ‘reasonable fees’ as stated in ¶5.5.15 of the trust was included to set a benchmark, here what a qualified corporate trustee would otherwise charge for the same services, on which to gauge reasonableness of the trustee fee. Mr. Mitchell[1] testified that he believed the court could determine a reasonableness

benchmark, and that the local rules inform [*sic*] could be used to set the standard.”

Mulberg asserts Mitchell’s testimony does not support this finding. He contends it is the intent of the settlor, not the settlor’s attorney, that should have been the focus of the probate court’s inquiry. Alternatively, Mulberg asserts Mitchell’s testimony supports a “plain meaning interpretation” of the term “reasonable fees,” though Mulberg does not specify what that interpretation is, and the probate court erred in failing to adhere to this interpretation.

These arguments are unpersuasive. As an initial matter, Mulberg targets language from the factual background section of the statement of decision. That language does not set forth the probate court’s rationale, and thus provides no basis for finding an abuse of discretion. In any event, Mitchell’s testimony does support the probate court’s decision. Mitchell stated that, when drafting the trust, “. . . I may have referenced it [(the local rules)] because it informs the reasonableness of the fees.” This testimony was never objected to by Mulberg. Indeed, the testimony was elicited by Mulberg’s own counsel on cross-examination over the objection of Amster. As Mulberg points out, Mitchell also testified the settlor did not intend to impose “some sort of absolute restriction on the amount of fees that an attorney or CPA trustee could charge.” But the probate court did not hold otherwise. It merely found Mulberg could not recover more than that which a qualified corporate trustee would charge for the same services, and that in this context those fees would have been guided by the local rules. The court’s finding was entirely consistent with the terms of the Trust.

2. Value of Trust Assets

The probate court found Mulberg was entitled to a fee of 1 percent of the Trust’s corpus per annum. Mulberg contends the probate court erred by calculating his compensation based on the carry value³ of the Trust’s assets, rather than the assets’ market value. The argument is unavailing. The Marin County Superior Court Local

³ The carry value of a trust asset is the value at the time it is acquired by the fiduciary.

Rules expressly instruct courts to use the carry value of a trust's assets when calculating a trustee's compensation. Mulberg argues these local rules are preempted by the prevailing case law. However, Mulberg cites no authority holding fair market value must be used in this context. The Supreme Court's decision in *Estate of Bissinger* (1964) 60 Cal.2d 756, at page 761, merely states "the computation of commissions to be paid executors and administrators is based on the value of all property accounted for and charged against the representative." The case says nothing about market value or carry value. Nor do the cases to which *Bissinger* cites. (See *Estate of Lampman* (1940) 15 Cal.2d 212, 216–217; *Estate of Carver* (1898) 123 Cal. 102, 106.) Mulberg also argues other trustees calculate their fees using fair market value. But the probate court was not bound to follow the practices employed by these trustees. Moreover, no provision of the Trust requires the use of an asset's fair market value in calculating trustee compensation.

3. Fees of Qualified Corporate Trustee

The probate court found a qualified corporate trustee providing the same services as Mulberg would have charged a fee of 1 percent of the trust's corpus. The court reasoned that Getchell, the trustee at the time of trial, charged 1 percent for the same services that were provided by Mulberg, and Mitchell, who drafted the Trust, testified this level of billing was consistent with Davis's intent. The court denied Mulberg's request for additional compensation for overseeing real estate purchases and trust investments based on how Wells Fargo and Mechanics Bank would have charged, finding Mulberg's compensation for those services was already included as part of his trustee fees. The court also found Mulberg did not actively manage the real estate assets of the Trust. According to the court, the additional fees charged by Mulberg were "unnecessary and unjustified" since the evidence showed Amster's relatives managed the Trust's real estate assets, a property management company managed the Trust's rental properties, Amster managed her own residence, and brokers were involved in the purchase and sale of the Trust's real property.

Mulberg now argues the probate court erred in relying on Getchell's testimony because she is not a qualified corporate trustee and because she does not provide the

same type of services as Mulberg. According to Mulberg, Getchell's role "has essentially been limited to paying the Trust's bills and distributing cash to Amster." In contrast, Mulberg argues, he was directly and intimately involved in every sale and purchase transaction affecting the Trust's assets. Mulberg argues Wells Fargo and Mechanics Bank charge a base, graduated percentage-based fee for trustee services, and charge additional fees for services such as asset management and purchase and sale of real estate, among other things. Mulberg argues the probate court committed error by failing to consider these banks' schedule-based percentage fees when calculating his proper compensation. Mulberg concludes that "[h]ad the trial court properly weighed and analyzed the evidence," it would have concluded he was entitled to a higher fee because he performed highly specialized trustee services.

The fundamental problem with Mulberg's argument is that we cannot reweigh the evidence on appeal. "[A]llowance [of compensation] rests in the sound discretion of the trial court," and its "ruling will not be disturbed on appeal in the absence of a manifest showing of abuse." (*Estate of McLaughlin* (1954) 43 Cal.2d 462, 465.) The probate court's decision to credit Getchell's testimony over other evidence presented by Mulberg was not an abuse of discretion, and thus cannot serve as a basis for reversal. Getchell is a certified specialist in estate planning, trusts, and probate law; she is familiar with what is commonly charged by and paid to corporate trustees; and her practice focuses on trusts and estates in Northern California.⁴ Accordingly, there was evidence to support a finding

⁴ The probate court overruled Mulberg's motion in limine to exclude Getchell's testimony. Mulberg now argues this was error because Getchell failed to provide an expert witness declaration as required by Code of Civil Procedure section 2034.260. No such declaration was required because Getchell testified as a nonretained expert witness. (See *Schreiber v. Estate of Kiser* (1999) 22 Cal.4th 31, 38–39.) Unlike a retained expert, Getchell did not receive additional materials from counsel or base her opinions or testimony on such materials. Getchell was appointed as trustee after Mulberg was removed and thus already had independent knowledge of the relevant facts. Mulberg asserts Getchell's opinions concerning standard of care, billing practices, and the services performed by Mulberg could have only been provided by a retained expert. But as a nonretained expert, Getchell could properly "testify as to any opinions formed on the

she is a qualified corporate trustee. Even if she is not, her testimony concerning the fees of a qualified corporate trustee is still entitled to some weight. Contrary to Mulberg's contentions, the probate court did not fail to consider evidence of banks' schedule-based percentage fees for trustee services. Those fees are discussed in the statement of decision. The probate court merely found those fees were not appropriate here. Moreover, as Amster argues, the probate court's finding that Mulberg was not actively involved in management of the Trust's assets is supported by substantial evidence. There was also substantial evidence to support the probate court's finding that the extent and quality of the services provided by Mulberg did not warrant the award of additional fees.⁵

D. Breaches of Fiduciary Duty

The probate court found Mulberg breached his fiduciary duties by (1) charging for his services as both a trustee and as an attorney without obtaining a waiver, (2) illegally billing the Trust for attorney work performed by his son without obtaining a waiver, and (3) failing to provide an annual accounting of the Trust's assets.⁶ Mulberg argues the court erred in considering these issues because Amster stipulated to withdraw all of her claims except those relating to Mulberg's fees. Mulberg also asserts he did not impermissibly charge for attorney services or his son's work.

basis of facts independently acquired and informed by h[er] training, skill, and experience.” (*Id.* at p. 39.)

⁵ In his reply brief, Mulberg further argues the probate court's findings were inconsistent with Amster's interrogatory admissions. “Obvious reasons of fairness militate against consideration of an issue raised initially in the reply brief of an appellant.” (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 295, fn. 11.)

⁶ Mulberg asserts the probate court also found he breached his fiduciary duties by failing to obtain court approval before compensating himself for his services, and by overpaying himself. Not so. While the probate court found Mulberg was required to obtain prior court approval and overpaid himself, the statement of decision does not characterize these actions as breaches of a fiduciary duty. As there is no indication the probate court's findings on these issues affected the outcome of the trial or the amount of the surcharge, we need not and do not address Mulberg's contention that the probate court erred in making these findings.

As an initial matter, it is unclear Mulberg would be entitled to any relief should we reverse the probate court's findings on these issues. The probate court did not expressly state the surcharge assessed against Mulberg was predicated on his breaches of fiduciary duty. The surcharge was calculated by taking the difference between an authorized fee and the fees charged by Mulberg. The order on appeal does not state whether the authorized fee was reduced because Mulberg breached his fiduciary duties. To the extent there was a reduction in the authorized fee based on a finding of a breach, we conclude the probate court's findings were supported by substantial evidence. We also find unavailing Mulberg's contention that the parties' stipulations precluded the court from considering whether there was a breach of fiduciary duty. Amster never stipulated to withdraw her claim Mulberg's fees were excessive. Thus, to the extent Mulberg's breaches were relevant to determining his fees, the court had jurisdiction to consider them.

1. The Stipulation

Mulberg contends the probate court disregarded the parties' stipulations by considering whether he breached his fiduciary duties. The argument is meritless.

At a December 10, 2014 deposition, Amster's counsel stated Amster did not intend to pursue "any claims of theft or self-dealing or fraud, or anything like that," but she would be "continuing on in our case as to a billing dispute and excessive billing and overbilling." A January 14, 2015 minute order states Amster's counsel "indicate[d] that the issue of the upcoming trial is strictly on the reasonableness of trustees fees." Another minute order, entered a week later, includes similar language. At trial, Amster's counsel said he "withdrew our claims seeking punitive damages and alleging fraud and all that. . . . [¶] But we did not withdraw our ability to introduce any evidence that would impact upon the services performed and the fees . . . that would arise from that."

Mulberg argues these stipulations precluded the probate court from permitting Amster to introduce evidence and argument concerning his purported breach of fiduciary duties. But Amster only stipulated to dismiss her fraud and punitive damage claims. Further, as Mulberg implicitly concedes elsewhere in his briefing, evidence of a breach of

fiduciary duties was relevant to Amster’s claim that Mulberg charged as an unreasonable fee, a claim Amster did not agree to dismiss. The factors set forth in California Rules of Court, rule 7.776, which courts may consider in determining trustee compensation—and which Mulberg insists the probate court was required to apply—include the “fidelity or disloyalty shown by the trustee.” (Cal. Rules of Court, rule 7.776(4).) Mulberg cannot seriously contend that we should reverse both because the probate court failed to consider the rule 7.776 factors (which it did in fact consider) and because the probate court did in fact consider one of the factors set forth in the rule.⁷

2. Dual Compensation

Mulberg argues the probate court erred in finding he impermissibly received dual compensation for his services as a trustee and an attorney. We disagree.

Probate Code⁸ section 15687 provides in relevant part: “[A] trustee who is an attorney may receive only (1) the trustee’s compensation provided in the trust or otherwise provided in this article or (2) compensation for legal services performed for the trustee, unless the trustee obtains approval for the right to dual compensation” (§ 15687, subd. (a).) In other words, a trustee who is an attorney may not receive both attorney fees and trustee’s fees. Here, the probate court found Mulberg charged for both his services as trustee and for services as an attorney during his first months as trustee, and there was no evidence Amster consented to such a practice.

We cannot conclude the probate court abused its discretion as substantial evidence supports its factual findings. Mulberg’s billing records and his own testimony indicate there were at least some occasions on which he billed the Trust for his services as an attorney. For example, an invoice submitted to Amster on January 14, 2012 was for work performed in December 2011 and January 2012, after Mulberg was appointed trustee,

⁷ The parties also stipulated Mulberg’s billing statements accurately reflected the work he performed for the Trust and that work was reasonably necessary for the administration of the Trust. Contrary to Mulberg’s contentions, the probate court’s finding that Mulberg charged over and above a reasonable fee was not inconsistent with these stipulations.

⁸ All further statutory references are to the Probate Code.

related to “Affidavits of death of trustee—review, revisions discussion w[ith] assoc[iate]; tracking of funding of assets of real property.” At trial, Mulberg conceded this work constituted legal services. A March 8, 2012 invoice is from Mulberg “Attorney at Law” to Mulberg “Trustee.” This invoice includes a billing entry for “Associate—drafting and revisions to Amster will and present estate plan and strategies adoptions.”

Mulberg contends he and his staff used and applied their training, experience, and skills in matters affecting the administration of the Trust, as required by the Probate Code. Mulberg also argues that when he required legal advice or assistance, he hired outside counsel, and paid them for services as expenses of the Trust. That Mulberg hired outside counsel does not preclude the possibility that, on certain occasions, he personally performed legal services for the Trust and billed for those services. As discussed, there is evidence he did so. Mulberg does not meaningfully discuss or address this evidence. Moreover, as set forth below, one of the associates hired by Mulberg was his son. This was also a breach of Mulberg’s fiduciary duty.

3. Mulberg’s Son

We also reject Mulberg’s contention that the probate court erroneously found he breached his fiduciary duty by billing the Trust for work performed by his son without an express waiver.

Section 15687, subdivision (b) provides: “No parent, child, sibling, or spouse of a person who is a trustee, and no law partnership or corporation whose partner, shareholder, or employee is serving as a trustee shall receive any compensation for legal services performed for the trustee unless the trustee waives trustee compensation or unless the trustee obtains approval for the right to dual compensation as provided in subdivision (d).” Subdivision (d) of section 15687 states that, after full disclosure of the relationship, the trustee may obtain approval by either obtaining a court order or providing 30 days’ advance written notice to the beneficiary. A related provision, section 16247, provides a trustee may hire persons, including attorneys, even if they are associated with the trustee, to advise or assist the trustee in the performance of administrative duties.

Here, the probate court found Mulberg hired his son, Brett Mulberg, to work as an employee of the Trust. Mulberg concedes Brett worked for Mulberg's law firm as an attorney and assisted him with the administration of the Trust. Mulberg nevertheless argues the probate court erred because Amster was aware Brett was assisting him, and because Brett received a salary that was not dependent upon the amount of work he performed for the Trust. Mulberg also argues Brett's employment was proper under section 16247.

We are not convinced. The evidence on which Mulberg relies does show Amster was aware Brett was assisting with the administration of the Trust. But it does not show Amster was aware of their relationship. Nor does it show Mulberg obtained consent to hire his son in a manner consistent with section 15687, subdivision (d). And the fact Brett was a salaried employee of Mulberg's law firm is irrelevant. The pertinent inquiry is whether he performed legal services, in which case prior consent was required under section 15687, or administrative functions, in which case section 16247 applies and no consent was required. The bills submitted by Mulberg suggest Brett provided legal services for the Trust. Thus, substantial evidence supports the probate court's findings.

III. DISPOSITION

The probate court's decision on the parties' petitions is affirmed. The parties shall bear their own costs.

Margulies, Acting P.J.

We concur:

Dondero, J.

Banke, J.

A146374